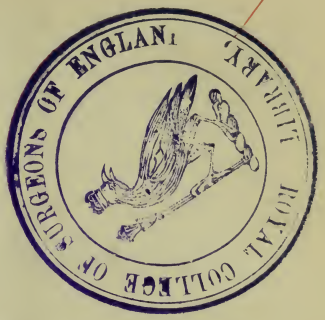

REMARKS

ON THE

PROPOSALS FOR AMENDMENT

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LAW OF CORONERS' INQUESTS.

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LAW OF CORONERS' INQUESTS,

BY

E. L. HUSSEY, SURGEON,

CORONER OF THE CITY OF OXFORD.

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1884.

TO THE RIGHT HONORABLE

SIR WILLIAM VERNON HARCOURT, M.P.

ONE OF HER MAJESTY'S

PRINCIPAL SECRETARIES OF STATE.

SIR,—

Every fresh subject calling for the attention of a Minister of State adds to the labor of his office, as it takes from the time at his command for other duties of equal, or greater, importance.

The defects in the ancient Law of Coroners' Inquests, and the amendments which have become necessary, have often occupied the public attention; and attempts have been made to obtain the sanction of Parliament to a revision of the Law.

Forgive me, if I suggest the subject as one deserving your attention, and the weight of your authority in recommending it to Parliament.

I am, Sir,

Your faithful Servant,

E. L. HUSSEY.

Oxford, January, 1884.

REMARKS, &c.

MANY suggestions have been made for amending the Law of Coroners' Inquests; — not the only part of the judicial system in need of amendment, may be said, after the Mackonochie case, the Tichborne case, and the Belt libel case, . . . to say nothing of the proceedings, or want of proceeding, at the fountain-head.

Among the changes proposed, one is, that the Inquisition *super visum corporis* shall be abolished; and that, instead of it, an enquiry into the cause of death shall be held by a Justice of the Peace, without viewing the body, . . . and, as a matter of course, without a Jury.

It has been proposed that the view of the body shall not be a necessary part of the proceedings before the Coroner, — or that the view shall be taken only at the discretion of the Coroner, or at

at the expressed wish of the Jury; — that the number of Jurors shall be less than is now required, and that they shall be taken from the Jurors' book in a County, and from the Burgess-roll in a Borough; — that the power of the Jury to put questions to the witnesses shall be abolished, and that no testimony but what is legal evidence shall be admitted during the enquiry; — that no accused person shall be tried upon an Inquisition found against him; — that a qualification, or evidence of professional fitness, shall be required of all Coroners; — and that the Coroners shall not be elected by the Freeholders in a County, nor by the Town Council in a Borough.

We have not been told that the Justices of the Peace are willing to undertake the duty of making the enquiry, or that the friends of a deceased person will find the attendance at a Police-Court, or at Petty Sessions, less unpleasant than at an enquiry before a Coroner. The attendance, it can hardly be doubted, will be more burdensome to the family of the deceased, the time given to the proceedings will in most cases be longer, and the costs of the enquiry will be greater.

It would be but a slight alteration of the present mode of procedure if the Coroner, — who is by his office a Conservator of the Peace, — should be declared to have the powers of a Justice of the Peace, for the purposes of the enquiry.

The view, it must be borne in mind, is for the discovery and for the identity of the body. This ought to be the duty of a recognised officer. The Coroner is the officer to whom the duty is committed; the Jury are the witnesses of the judicial act, and neither they nor the Coroner can be excused from the proper and orderly performance of the duty. It is not necessary that all the Jurors summoned should join in the view; but the body is present, and without it the enquiry, as a judicial proceeding, becomes worthless. In cases of suspicion, unless the cause of death is found by judicial enquiry, a man ought not to be put on his trial for homicide; nor, if correct registration of the causes of death is desirable, ought the death to be registered without it. If the identity of the body, and the cause of death, are not found before burial of the remains, the evidence can hardly be found satisfactorily afterwards.

There is a general concurrence of opinion that the Coroners for a County should not be elected by the Freeholders at large. But there is not the same agreement on the question how they ought to be elected. It has been proposed that the appointment should be made by the Court of Quarter Sessions, — on the principle that the local authority, which makes the payment for the work done, is the proper body for appointing the officer who does the work.

In Boroughs, where the Town Council have the right to elect their more important officer, the Mayor, there is no visible reason why they should not also continue to elect the Coroner.

Upon the question of qualification, it should be observed that no test of professional fitness is required of a Mayor, or a Justice of the Peace, nor of a Sheriff, or Under-sheriff; — that the greater number of the Coroners in England are either professional Lawyers or Medical Practitioners; that the Deputy appointed by a Coroner for a County must be approved by the Lord Chancellor; and that successive Chancellors have laid down a rule that the Deputy must be a Lawyer or a Medical Practitioner.

Practitioner. . . . Under the Irish Coroners Act of 1881, it is required that every Coroner in Ireland shall be a Medical Practitioner, a Barrister or Solicitor, or a Justice of the Peace.

It would be well, perhaps, if the same control over the appointment of a Deputy by the Coroner of a Borough was given to the Lord Chancellor; and also that the Coroner of a Borough should have as full power of acting by Deputy as the Coroner for a County has.

It was proposed by a Committee of the House of Commons that the number of Jurors to agree in a Verdict should be nine. In some of the Colonies, seven is the number required. In the United States of America, six is sufficient. . . . In actions tried in the County Courts, five is the number required for a Jury: in some Manor Courts even less. In the High Court of Justice, the Judges have adopted what has always been the practise in Chancery, that of hearing and determining causes without a Jury. It follows, of course, that if less than twelve are required to find a verdict, the Inquisition can not be taken as a Bill of

of Indictment, on which an accused person should be put on his trial.

Whether a Jury is summoned, or not; and, if summoned, whatever the number of Jurors necessary to find a Verdict, it is not likely that objection will be raised to the proposal that in cases of Homicide, the Inquisition and Depositions shall be referred at once to the Justices of the Peace for the district.

No objection has been made to the proposal that the Jurors should be taken from the recognised lists of qualified persons; provided the power is continued of taking *tales de circumstantibus*, if necessary. When the time comes that women are admitted to what some people tell us are their full rights of citizenship, and their names are put on the Burgess-roll, they can be taken in their turn as Jurors.

The suggestions made by the Jury are sometimes useful, as leading to the discovery of matters important to the enquiry; and, under due regulation by the Coroner, are not found to be objectionable in practice. It may be easy to exclude

exclude what is irrelevant from the written Depositions; but it will not be so easy in the course of the enquiry to hinder statements that are extraneous or irrelevant from being made by persons called to give evidence, when their knowlege of the facts, and the testimony they can give, have not been previously sifted by a Solicitor.

The Coroner should have the power, when he receives information of a death, to take the testimony of the Informant on oath; — and he should also have the power to summon a Medical Practitioner for his opinion or for information, and for making a *post-mortem* examination, if necessary; — with power to take the testimony of the Practitioner, on oath or otherwise, as he may think best, before he decides upon further proceedings. In many cases the necessity for a public enquiry would be avoided, if the Coroner could obtain information in an authoritative form from a Medical Practitioner.

It has been suggested that the enquiry might in all cases be held by the Coroner without a Jury. It is so in Scotland, — with the difference that the Officer there is called the Procurator Fiscal; and that

that the enquiry is held in private, . . . the special duty of the Officer in Scotland being the discovery of crime, rather than finding the cause of death, as in England.

The following alterations, I venture to submit as amendments likely to be generally satisfactory: —

That the Statutory powers of a Justice of the Peace should be given to the Coroner for the purposes of his Inquest; —

That in holding the Inquest, it should not be necessary to summon a Jury, — unless required to do so, upon notice from three Householders of the neighborhood, from a Justice of the Peace, from the Registrar of Births and Deaths, or from an Officer of Police: — and that, when a Jury is summoned, it should be sufficient if seven Jurors agree in finding a Verdict.

Oxford, January, 1884.

BY THE SAME AUTHOR.

MISCELLANEA MEDICO - CHIRURGICA ; —
Cases in Practice, Reports, Letters and occasional Papers.
1882.

EXTRACTS FROM VARIOUS AUTHORS, and
Fragments of Table-Talk. 1883.